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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,053	11/19/2003	David Charles Lyons	12929.1123US01	9304

7590

11/09/2005

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/718,053

Applicant(s)

LYONS ET AL.

Examiner

Josiah Cocks

Art Unit

3749

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☒ Newly proposed or amended claim(s) 17-21, 23-27, 29-31 and 34-36 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


JOSIAH C. COCKS
PRIMARY EXAMINER

ADVISORY ACTION

1. Continuation of item 3:

Claim 33 is dependent upon claim 32, which is canceled in the proposed amendment. Accordingly, the scope of proposed claim 33 cannot be determined and is therefore indefinite under 35 USC 112, 2nd paragraph. Application of a rejection under 35 USC 112, 2nd paragraph would require further consideration by the examiner. Accordingly, the entire paper is denied entry.

2. Continuation of item 11:

Applicant's arguments concerning claims 38-50 have been considered but are not persuasive.

In regard to claim 38, applicant argues that Hawkinson fails to disclose "securing the glass panel to the combustion chamber enclosure with the combustion air enclosure positioned there between. However, the examiner notes that the combustion air enclosure is equated in Hawkinson as the air passageways (124). These passageways are bounded on two sides (as shown in Figure 3) by glass panels (122). The combustion chamber enclosure is considered to be formed of portions of the device shown that include upper wall portion (114), the unnumbered upper wall portion above (114), lower wall (116) and panels (120). Therefore, the panels (120) are secured to the combustion chamber enclosure with the combustion air enclosure (124) positioned there between as recited in applicant's claim.

Art Unit: 3749

In regard to claims 39-43, contrary to applicant's arguments, the examiner considers that when Cakebread is modified to include the surround of Petersen, the glass frame of Cakebread would be covered from view as recited in applicant's claim 39.

In regard to claims 44-50, the examiner previously relied upon MPEP 2144.04(II)(A) to support a conclusion that providing no viewing through the glass panel (122) of Hawkinson would simply be an obvious matter of eliminating the viewability function of the panel of Hawkinson. Applicant did not discuss the examiner's MPEP authority in drawing this conclusion. Accordingly, the rejection relying upon the MPEP support is maintained. Applicant further argues that the air passageway (124) between panels (120 and 122) as shown in Figure 3 of Hawkinson do not constitute a combustion air enclosure as claimed. However, in applying Hawkinson to these claims, the examiner considers that the combustion air passageway (124) are the combustion air enclosure as recited and is positioned between panels (122) and (120) as shown. As applicant does not define what constitutes a "side" panel one of the panels (122) is considered a rear panel and the other a side panel.

In regard to claims 1-16 and 51, as previously indicated, these claims are allowable.

USPTO Contact Information


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

Art Unit: 3749

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
November 1, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749